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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/148,012	09/04/1998	MONTY KRIEGER	MIT7150CIP(2	2616

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EXAMINER

LANDSMAN, ROBERT S

ART UNIT	PAPER NUMBER
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1647

27

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/148,012

Applicant(s)

KRIEGER, MONTY

Examiner

Robert Landsman

Art Unit

1647

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-10, 12, 15, 16 and 21-23.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Continuation of 10. Other: Claims 1-10, 12, 15, 16 and 21-23 remain rejected under 35 USC 112, first paragraph (both scope of enablement and written description) for the reasons already of record on pages 2-3 of the Office Action dated 2/6/03. Applicants argue that one in the art would be able to practice the claimed method with only routine experimentation. Applicants argue that one can identify a patient in need of treatment and can administer lipid-altering drugs. However, these are single means claims. Applicants have only identified a small number of drugs which can be used to alter cholesterol levels, including Probucol and estrogen, though Applicants argue that estrogen is not encompassed by the claimed invention. Therefore, Applicants are only enabled for the compounds and methods for which they have claimed.

Claims 1-10, 12, 15, 16 and 21-23 remain rejected under 35 USC 112, second paragraph, for the reasons already of record on page 4 of the Office Action dated 2/6/03. Applicants have amended the claims to recite "enhanced or restored" fertility. However, there is no endpoint demonstrating when fertility is enhanced or restored. The ability to, for example, become pregnant, does not necessarily mean that the patient has 'enhanced or restored' fertility and this may have occurred in the absence of practicing the claimed method, by chance..

ROBERT LANDSMAN
PATENT EXAMINER